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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,256	04/12/2004	Richard D. Kelley	DET1943	2680
44088	7590	04/04/2005	EXAMINER	
SEAN KAUFHOLD			BARNEY, SETH E	
P. O. BOX 89626			ART UNIT	
SIOUX FALLS, SD 57109			PAPER NUMBER	
			3752	
DATE MAILED: 04/04/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/822,256	<b>Applicant(s)</b> KELLEY, RICHARD D.	
	<b>Examiner</b> Seth Barney	<b>Art Unit</b> 3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 April 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9 and 10 is/are allowed.
- 6) ☒ Claim(s) 1,2,8 is/are rejected.
- 7) ☒ Claim(s) 3-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Information Disclosure Statement*

1. There appears to be typographical errors on the IDS. "414,933" should be D414931 and "268695" should be D268695. The correct numbers have been added to the PTO-892 form.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1 and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,523,717 to Schwab in view of U.S. Patent No. 6,502,762 to Tuttobene.

Schwab discloses an animal scent container having:

-a housing having a first wall, a second wall, and peripheral wall extending between and being attached to the first and second walls, the peripheral wall having a peripheral break therein such that the housing is divided into a first portion (16) and second portion (12). See Figures 1 and 2.

-a moving assembly (38) being mounted in the housing and being adapted for selectively moving the first portion abutting against or positioned away from the second portion. See Figure 2.

-a coupler (52) being attached to the housing for selectively coupling the housing to a tree limb. See Figure 2.

-a scent dispenser member (28) being positioned within the housing at a juncture of the first and second portions.

Schwab does not disclose an actuator apparatus adapted for remotely turning on the moving assembly and selectively moving the first portion with respect to the second portion. Tuttobene discloses a scent emitter having an actuator apparatus for remotely (automatic actuation based on a timer is considered remote actuation because the user does not have to be there) turning on the moving assembly and allowing rotational movement of a first portion relative to a second portion. See Figure 3. The animal scent emitter of Schwab opens by rotational movement of the moving assembly (38). Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the actuator apparatus of Tuttobene to the animal scent container of Schwab in order to allow for automatic opening and closing.

Regarding claim 2, the moving assembly of Schwab is a threaded rod (38) and a tube (24) having an inner threaded surface, the threaded rod extending into and being threadably coupled to the tube, the combinations being attached to and extending between the first and second portions. See Figure 2. Tuttobene uses a motor to actuate rotational movement. Therefore the apparatus of Schwab as modified by Tuttobene would have a motor to allow rotational movement of the rod in a first direction that would cause the first portion to move away from the second portion.

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4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,523,717 to Schwab and U.S. Patent No. 6,502,762 to Tuttobene as applied to claim 1 above, and further in view of U.S. Patent No. 5,611,165 to Blaha.

Schwab as modified by Tuttobene meets all of the limitations of the claim except for a sealing ring being attached to and extending along the upper portion. Blaha discloses a scent dispenser having a sealing ring (40) in order to ensure that the scent does not dissipate when not in use. See column 3 lines 10 to 18. It would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the scent container of Schwab with the sealing ring as taught by Blaha in order to keep the scent inside the container when not in use.

***Allowable Subject Matter***

5. Claims 9 and 10 are allowed.

6. Claims 4, 5, 6, and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 6,241,161 to Corbett discloses a hunting scent container having two parts that separate to expose scent. U.S. Patent No. 5,746,019 to Fisher discloses a hunter scent system having two parts that screw together, wherein unscrewing the lower part exposes the scent.

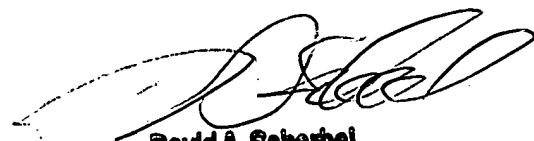
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Seth Barney whose telephone number is (571)272-4896. The examiner can normally be reached on 7:30am-5:00pm (Mon-Fri).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dave Scherbel can be reached on (571)272-4919. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Seth Barney  
Examiner  
Art Unit 3752

sb



**David A. Scherbel**  
**Supervisory Patent Examiner**  
**Group 3700**